

# **Exhibit 39**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION  
4

5 CHROMADEx, INC., )

6 PLAINTIFF, ) CASE NO.

) 16-02277-CJC-(DFMx)

7 vs. )

8 ELYSIUM HEALTH, INC., AND )  
9 MARK MORRIS, )

DEFENDANTS. )

10 \_\_\_\_\_ )  
AND RELATED CROSS-ACTIONS. )

11 \_\_\_\_\_ )  
12  
13  
14 \* \* \* ATTORNEYS' EYES ONLY \* \* \*  
15 VIDEOTAPED DEPOSITION OF WILL BLACK  
16 TAKEN THURSDAY, APRIL 18, 2019  
17 LOS ANGELES, CALIFORNIA  
18  
19  
20  
21  
22

23 Reported by Audra E. Cramer, CSR No. 9901  
24 Job No. 159131  
25

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION  
4

5 CHROMADEx, INC., )

6 PLAINTIFF, ) CASE NO.

) 16-02277-CJC-(DFMx)

7 vs. )

8 ELYSIUM HEALTH, INC., AND )

MARK MORRIS, )

9 DEFENDANTS. )

10 \_\_\_\_\_ )  
AND RELATED CROSS-ACTIONS. )

11 \_\_\_\_\_ )  
12  
13  
14  
15 VIDEOTAPED DEPOSITION OF WILL BLACK, TAKEN ON BEHALF  
16 OF THE DEFENDANT AND COUNTERCLAIMANT, AT 9:45 A.M.,  
17 THURSDAY, APRIL 18, 2019, AT 11601 WILSHIRE BOULEVARD,  
18 LOS ANGELES, CALIFORNIA, BEFORE AUDRA E. CRAMER,  
19 CSR NO. 9901, PURSUANT TO NOTICE.  
20  
21  
22  
23  
24  
25

1 APPEARANCES OF COUNSEL

2

3 FOR PLAINTIFF AND CROSS-DEFENDANT:

4 COOLEY

BY: BARRETT ANDERSON, ESQUIRE

5 JAYME STATEN, ESQUIRE

4401 EASTGATE MALL

6 SAN DIEGO, CALIFORNIA 92121

7

8

9 FOR DEFENDANT AND COUNTERCLAIMANT:

10 BAKER & HOSTETLER

BY: JOSEPH SACCA, ESQUIRE

11 DARLEY MAW, ESQUIRE

45 ROCKEFELLER PLAZA

12 NEW YORK, NEW YORK 10111

13

14

15 ALSO PRESENT:

16 ALINE MAYER, VIDEOGRAPHER

17 THOMAS WILHELM

18

19

20

21

22

23

24

25

1 period.

2 Q. And what part of the agreement  
3 discussed purchase on a 12-month basis?

4 A. It was elsewhere in the agreement. I  
5 honestly don't know the exact paragraphs or  
6 sections.

7 Q. What did it relate to?

8 A. It -- as I remember, it related to the  
9 frequency of orders, how orders would be placed  
10 and some language around forecasting. But I'm  
11 going on memory.

12 Q. Did it relate to pricing?

13 A. Without looking at the document, I'm  
14 not sure.

15 Q. Did you tell Elysium on the call that  
16 it related to pricing?

17 A. We gave them our -- we stated our  
18 interpretation that one PO -- one purchase order  
19 in and of itself did not establish them as the  
20 largest customer and wasn't, in our  
21 interpretation, the trigger for an adjustment.

22 Q. As best you can recall, what exactly  
23 did you tell Elysium your interpretation of the  
24 agreement was?

25 A. That we would review their -- the

1 totality of their purchases from ChromaDex on a  
2 12-month basis, and specifically a calendar  
3 basis. So in this respect, for 2016.

4 Q. And did you tell them the basis for  
5 that interpretation?

6 A. Yes.

7 Q. Which was what?

8 A. Which was, we had not established that  
9 it was a single PO and that the language in the  
10 agreement talked about purchases over a 12-month  
11 period.

12 Q. And did you cite them to a specific  
13 provision in the agreement?

14 A. I think we probably did.

15 Q. Did you have the agreement with you?

16 A. We probably had access to it, either  
17 digitally or in hard form.

18 Q. Was it you who communicated ChromaDex's  
19 position on the MFN pricing provision or  
20 Mr. Jaksch?

21 A. I don't recollect.

22 Q. Had you come into the meeting prepared  
23 to discuss the interpretation?

24 A. I came into the meeting, again, with --  
25 holistically being prepared to talk about all

1 Elysium, think it should be priced, each of the  
2 individual ingredients -- there were two  
3 involved -- should be priced here and here.  
4 Okay?

5 I think there was some negotiation on  
6 the phone, and we said, Look, your  
7 interpretation of this MFN is not the way we see  
8 it, but in the spirit of the agreement and the  
9 relationship in moving forward together, we will  
10 agree on this price, reiterating that one PO did  
11 not make them the largest customer of ChromaDex.

12 And so how it ended was an agreement on  
13 volume and price for that second-quarter -- that  
14 second-quarter order.

15 Q. And when you said Elysium said, We  
16 think the price should be here and here, what  
17 were the prices?

18 A. As I remember, we agreed to \$800 for  
19 the nicotinamide riboside and \$1,000 -- these  
20 are per kilo -- for the pterostilbene.

21 Q. And were these proposed by Elysium?

22 A. I don't remember who proposed -- who  
23 proposed which number. It's what we mutually  
24 settled on. So there was obviously some  
25 discussion, dialogue and agreement on that

1 number, but I'm not -- I don't recollect who  
2 proposed a number or the number.

3 Q. And did you understand there to be a  
4 connection between the volume Elysium ordered  
5 and the per-kilo price of each agreement?

6 A. A relationship --

7 Q. Between the volume they would order and  
8 the price.

9 A. Yes.

10 Q. And the increased price resulted in  
11 decreased volume?

12 A. Well, the -- actually, the price for  
13 the nicotinamide riboside for that order was  
14 less than their previous order.

15 Q. Than which previous order?

16 A. Their Quarter 1 order.

17 Q. Right. No, no. I'm sorry.

18 Elysium had, prior to this phone call,  
19 submitted a purchase order for a certain  
20 quantity at a certain price --

21 A. Yes.

22 Q. -- correct?

23 A. Yes.

24 Q. And the ultimate resolution was that  
25 the price was higher -- it was double, correct,



1 STATE OF CALIFORNIA )  
2 COUNTY OF LOS ANGELES ) SS.

3

4 I, AUDRA E. CRAMER, CSR No. 9901, in and for the  
5 State of California, do hereby certify:

6 That, prior to being examined, the witness named  
7 in the foregoing deposition was by me duly sworn to  
8 testify the truth, the whole truth and nothing but the  
9 truth;

10 That said deposition was taken down by me in  
11 shorthand at the time and place therein named, and  
12 thereafter reduced to typewriting under my direction,  
13 and the same is a true, correct and complete transcript  
14 of said proceedings;

15 I further certify that I am not interested in the  
16 event of the action.

17 Witness my hand this 30th day of April,  
18 2019.

19

20

21



22

23 Certified Shorthand

24

Reporter for the

25

State of California